ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION I

CACR07-876

March 12, 2008

LORETTA L. SANDERS
APPELLANT

AN APPEAL FROM SEBASTIAN COUNTY CIRCUIT COURT
[CR2006-991]

V.

HON. J. MICHAEL FITZHUGH, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Loretta Sanders appeals from her conviction for Class C felony criminal mischief, arguing that the trial court erred in denying her motion for a directed verdict because the State failed to prove that she caused at least $500 in actual damages. We affirm her conviction without reaching the merits of her argument because her motion for a directed verdict failed to preserve any specific argument regarding the sufficiency of the State's evidence against her.

Appellant was charged with Class C felony criminal mischief in connection with damages caused to Motel 8 Room 111 on August 22, 2006.[1] She received a jury trial during which the motel's manager, Bob Spradlin, testified. Spradlin was on duty the night the room was vandalized. He testified that the room was in "great shape" prior to August 22 and had no major damage. He further testified that the room's window was broken, and that glass was strewn "all over" the carpet; that the bathroom door was damaged; and that the curtain was

[1]Appellant was also found guilty of third-degree assault but that conviction is not the subject of this appeal.

damaged. State's Exhibit 4, a list of damages and repairs, showed total damages, including labor, of $677.84. Of this amount, $320.72, was assigned for loss of rental income, for eight days, at the rate of $40.09 per night (tax included).

Spradlin said that it took eight days to repair the window, and that, during that time, he was unable to rent the room. He explained that the motel was "fairly full" around that time and said that during the summertime "we usually fill up by 10:00 p.m." However, Spradlin was unable to specifically recall if there were any vacancies at the time of the incident. The jury found appellant guilty of first-degree criminal mischief and sentenced her to serve ten years in the Arkansas Department of Correction.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *See Thomas v. State*, 92 Ark. App. 425, 214 S.W.3d 863 (2005). On appeal from the denial of a motion for a directed verdict, the sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is that evidence which is of sufficient force and character to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* This court considers only the evidence supporting the guilty verdict, and the evidence is viewed in the light most favorable to the State. *Id.* Determinations of credibility are left to the jury. *Id.*

A person commits first-degree criminal mischief if she purposely and without legal justification destroys or causes damage to the property of another and if the amount of actual damages is $500 or greater. *See* Ark. Code Ann. § 5-38-203(b)(1)(Repl. 2006). Appellant now argues that the trial court erred in denying her motion for a directed verdict because the State failed to prove that she caused at least $500 in damages. She asserts that the portion of the damages attributed to loss of rental income was based on speculation, because the jury would be required to assume that the motel room would have rented each day of the eight-day period that the room was under repair. Further, she argues that the jury was required to

speculate to determine that 100% of the loss of rental income was due to her criminal conduct because Spradlin did not testify "with any certainty" that Room 111 would have rented but for its uninhabitability, and because he could not recall whether there was an actual vacancy during the eight days that the room was under repair.

We affirm because appellant's arguments are not preserved for appellate review. At the close of the State's case-in-chief, appellant moved for a directed verdict, as follows: "At this time, the Defense moves for a directed verdict on the charge of criminal mischief. The evidence does not establish a felony in that regard." At the close of all of the evidence, appellant renewed her motion, stating, "The Defense renews our previous motion for a directed verdict on the charge of criminal mischief *for the reasons originally set out; that the State has failed to prove the elements of felony criminal mischief.*" (Emphasis added.)

In order to preserve a challenge to the sufficiency of the evidence, a defendant must make a specific motion for a directed verdict, both at the close of the State's case and at the end of all the evidence, which advises the trial court of the exact element of the crime that the State has failed to prove. *See* Ark. R. Crim. P. 33.1 (a),(c); *Carey v. State*, 365 Ark. 379, 230 S.W.3d 553 (2006). A general motion that merely asserts that the State has failed to prove its case is inadequate to preserve the issue for appeal. *See Carey*, *supra*. Thus, because appellant here made only a general motion for a directed verdict, and did not challenge any specific element of the State's proof, she failed to preserve her arguments for appellate review.[2]

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[2]We note that a property owner is entitled to recover as damages the lost rental value of a hotel room during the period of deprivation, even if the room was being used at the time. *See Arkansas-Missouri Power Co. v. Deal*, 263 Ark. 645, 566 S.W.2d 747 (1978). Thus, Spradlin was not required to testify with perfect recall whether there was a vacancy when the room was being repaired, and, notably, appellant did not challenge his testimony as speculative. As the motel's manager, Spradlin offered competent testimony regarding the cost of repairs and the loss of revenue based on lost rent. His testimony that the motel was "fairly full" at the time of the incident and that during the summertime, when the

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.

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incident occurred, and that the motel "usually fill[s] up by 10:00 p.m." was sufficient to allow the jury to infer that, but for appellant's criminal conduct, Room 111 would have been rented, or at least would have been available for rental, during the relevant eight-day period.